

**ENTERED**

March 28, 2017

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION****PATRICIA ORTIZ-SORNSON,**

§

**Plaintiff,**

§

**VS.**

§

**RHONDA MCDONALD, *et al.***

§

**Defendants.**

§

**CIVIL ACTION NO. 4:16-CV-174****ORDER PARTIALLY ADOPTING REPORT AND RECOMMENDATION**

Before the Court is Defendants' Motion to Dismiss Pursuant to Rules 12(b)(2), 12(b)(4), and 12(b)(5). (Doc. No. 23.) On February 23, 2017, United States Magistrate Judge Dena Hanovice Palermo issued a Report and Recommendation ("R & R") recommending that the motion be denied; the returns of service for Defendants Marlene Hollier, Rhonda McDonald, Steven B. Schnee, and the Harris Center<sup>1</sup> be quashed; and that the Court grant Plaintiff 21 days from the adoption of the R & R to effectuate proper service on Defendants. (Doc. No. 27.)

In addition, Judge Palermo recommended *sua sponte* the dismissal of the following claims for failure to state a claim upon which relief can be granted: the § 1981 discrimination claim against the Harris Center, Hollier, and Schnee; the § 1981 retaliation claim against Hollier, McDonald, Schnee, and the Harris Center; the Family and Medical Leave Act (FMLA) interference and retaliation claims against Schnee and Hollier; the intentional infliction of emotional distress claim against Hollier, McDonald, Schnee, and the Harris Center. *Id.* Judge Palermo recommended that Plaintiff be granted leave to amend to re-plead her § 1981 and

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<sup>1</sup> Plaintiff named as a defendant the Mental Health Mental Retardation Agency of Harris County, Texas, now known as the Harris Center for Mental Health and IDD. The Court follows Judge Palermo's R & R in referring to this Defendant as "the Harris Center."

FMLA claims within 21 days of the adoption of the R & R. *Id.*

Defendants filed objections to the R & R on March 9, 2017. (Doc. No. 28.)<sup>2</sup> Defendants do not object to the portions of the R & R pertaining to Defendants' claim of improper service. Therefore, pursuant to Federal Rule of Civil Procedure 72(b), the Court reviews those recommendations for clear error. Finding no clear error, the Court **ADOPTS** the portions of the R & R pertaining to improper service. It is therefore **ORDERED** that the Motion to Dismiss is denied; the returns of service for Defendants Marlene Hollier, Rhonda McDonald, Steven B. Schnee, and the Harris Center are quashed; and Plaintiff has 21 days to effectuate proper service on Defendants.

Defendants object to some of the *sua sponte* recommendations in the R & R. (Doc. No. 28 at 3.) Because the Complaint was not served properly, the Court declines to adopt the *sua sponte* recommendations regarding individual claims.

**IT IS SO ORDERED.**

**SIGNED** at Houston, Texas, on this the 28th day of March, 2017.



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HON. KEITH P. ELLISON  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup> Plaintiff filed neither objections to the R & R nor a response to Defendants' objections.